

Review of the Quality of the Debt Recognition and Collection Process for Railroad Retirement Act Overpayments, Report No. 01-11, August 9, 2001

EXECUTIVE SUMMARY

This report presents the results of the Office of Inspector General's (OIG) review of the quality of the debt recognition and collection process for Railroad Retirement Act (RRA) overpayments at the Railroad Retirement Board (RRB). The RRB administers the health and welfare provisions of the RRA which provide retirement-survivor benefits for eligible railroad employees, their spouses, widows and other survivors.

Our analysis of the agency's experience in identifying and collecting large RRA overpayments indicates the debt recovery process suffers from inadequate quality assurance procedures, which, in turn, adversely impact the quality of customer service and the efficiency of program operations.

We selected the largest RRA overpayments established during FY 1998, those that exceeded \$25,000, for detailed review. We tracked the progress of collection in each case from the date the debt was established through the appeals process and any subsequent collection action. We identified 48 handling errors in the 78 cases reviewed. In addition, we observed that the quality of overpayment letters tends to be uneven and that denials of debtor requests for waiver of recovery are inadequately documented. We also noted that letters advising debtors of the decision on their request for waiver were sometimes brusque and often did not properly address all of the pertinent issues and circumstances.

During the audit it came to our attention that the RRB has collected, and continues to assess and collect, overpayments that were established due to a misapplication of certain provisions of the Social Security Act. In 1995, as a result of an appeal to the three-member Board, the agency ended the practice of withholding RRA benefits from incarcerated felons pursuant to provisions of the Social Security Act that denied such individuals Social Security benefits.

The appellant had threatened legal action citing a Federal court decision in an analogous case. However, because the change in agency policy was implemented prospectively, previously established debts were collected and new debts for periods pre-dating the change in agency policy continued to be recognized.

We have made specific recommendations for corrective action to strengthen internal control in the areas of weakness identified by the audit. We have also recommended that benefits withheld and debts collected pursuant to the incarcerated felons provisions of the Social Security Act be restored.

The Bureau of Fiscal Operations and the Office of Programs have agreed to implement our recommendations to improve the quality of the debt recovery and waiver processes. Our recommendations for the restoration of benefits withheld from annuitants during periods of incarceration will remain open until the Office of Programs has received direction from the three-member Board and taken action accordingly.

In addition, we discuss fault determinations, administrative finality and compromise offers. These issues relate primarily to management's intention with regard to debt recovery operations rather than to transactional accuracy. Our observations on these subjects are presented without recommendation for corrective action.

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INTRODUCTION

This report presents the results of the Office of Inspector General's (OIG) review of the quality of the debt recognition and collection process for Railroad Retirement Act (RRA) overpayments at the Railroad Retirement Board (RRB).

BACKGROUND

The RRB is an independent agency in the executive branch of the Federal government. The RRB administers the health and welfare provisions of the RRA which provide retirement-survivor benefits for eligible railroad employees, their spouses, widows and other survivors. During fiscal year (FY) 2000, approximately 724,000 annuitants received benefits totaling \$8.3 billion under the RRA.

The RRB also administers the Railroad Unemployment Insurance Act (RUIA) which provides unemployment and sickness insurance to workers in the rail industry. During FY 2000, the RRB paid \$76.5 million to the 14,000 individuals qualifying for unemployment benefits and the 23,000 individuals qualifying for sickness benefits under the RUIA.

Program debt typically arises when a change in an annuitant's personal or employment status occurs. In many cases, notice of an event that will affect the benefit payment amount is received after-the-fact. If the corrected rate is lower than the amount actually paid in the past, the beneficiary will have been overpaid. The agency then recognizes a debt in its financial records and takes action to collect the overpayment. In FY 2000, the RRB established new receivables due from the public totaling \$87.3 million including principal and interest.

Events that take place after benefits have been awarded, such as death, divorce, remarriage and return to employment, may affect eligibility or necessitate re-computation of the benefit payment amount. Concurrent entitlement to Social Security benefits, workers' compensation or other retirement benefits may also impact eligibility and/or benefit levels.

The Bureau of Fiscal Operations has primary responsibility for the RRB's accounting operations. Within the Bureau of Fiscal Operations, the Debt Recovery Section (DRS) has overall responsibility for the RRB's debt collection activities, including monitoring the collection status of pending debt, pursuing delinquent debtors, and determining whether requests for waiver of collection will be granted.

Current regulations provide for waiver of recovery of RRA benefit overpayments, if, in the judgement of the Board, the overpaid individual is without fault, and recovery would be contrary to the purposes of the RRA or would be against equity and good conscience. As a result, debtors have recourse to an appeals process that begins by filing a request for waiver of collection with DRS. DRS's decision may be appealed successively to the Bureau of Hearings and Appeals, the three-member Board, and the Federal courts.

The Program Accounts Receivable (PAR) system is a mainframe computer application that supports the agency's debt recovery operations. It contains the detailed history of each debt recognized by the RRB including the cause, amount, collections, outstanding balance, and final disposition. Although DRS has administrative responsibility for the PAR system, the majority of transactions recorded in PAR are initiated in the Office of Programs.

The RRB's strategic plan includes "ensure efficient operations through effective management control and quality assurance programs" as the second strategic objective in meeting the larger goal of safeguarding agency trust funds through prudent stewardship. The quality of the debt recognition and collection process directly impacts this area of management performance.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of this review was to identify opportunities to improve the effectiveness and efficiency of RRA debt recognition and collection operations.

In order to accomplish our objective, we:

- obtained a download of debt established during FY 1998 as of September 30, 1998, and updated the pending balance at the end of FY 1999, FY 2000 and March 2001;
- analyzed debt established during FY 1998 by cause of overpayment and status of collections;
- performed a detailed review of the claim file and the PAR system history for 78 overpayments established during FY 1998 that exceeded \$25,000;
- performed limited reviews of selected debts established during FYs 1998, 1999 and 2000 to validate the continued existence of our findings related to administrative finality and waiver;
- interviewed agency management and staff concerning debt recognition and collection procedures; and
- obtained debt recovery statistics for prior years.

The PAR system contained entries for 98 overpayments established during FY 1998 that exceeded \$25,000. We excluded from our review the 20 cases that resulted from the routine, retroactive, downward, adjustment of RRA annuities due to concurrent entitlement to Social Security benefits. In these cases, both the overpayment and its recovery exist only on paper because the RRB pays both benefits. No collection action was required because no funds were actually disbursed in error.

In evaluating cases for mishandling and errors, we considered only the information available to agency personnel at the time a decision was made. We did not assess errors for decisions rendered based on information that was later found to be erroneous.

Our work was performed in accordance with generally accepted government auditing standards as applicable to the audit objectives. Fieldwork was conducted at RRB headquarters during March 2000 through April 2001.

RESULTS OF REVIEW

Our detailed study of RRA program debts over \$25,000 indicates that the present system of quality control is not adequate to ensure the effectiveness and efficiency of the debt recovery process for RRA benefit overpayments. We also noted that the RRB continues to assess and collect overpayments under certain eligibility provisions of the Social Security Act that are not applicable to benefits paid under the RRA.

Our detailed findings and recommendations follow. We have also presented, for management's information, without recommendation for corrective action, some observations related to fault determinations, administrative finality and compromise of debt.

QUALITY OF OVERPAYMENT RECOVERY PROCESS IS NOT ENSURED

The RRB has not ensured the quality of the debt recovery process for RRA program debt.

The RRB has established strategic goals that include ensuring efficient operations through effective management control and quality assurance programs in support of its larger objective of providing excellent customer service. Our analysis of the agency's experience in identifying and collecting large overpayments indicates the debt recovery process suffers from inadequate quality assurance procedures, which, in turn, adversely impact the quality of customer service and the efficiency of program operations.

We selected the 78 largest RRA overpayments established during FY 1998, those that exceeded \$25,000, for detailed review. We tracked the progress of collection in each case from the date the debt was established through the appeals process and any subsequent collection action. We identified 48 handling errors, affecting 34 of the 78 cases reviewed (44%); many of the cases had more than one error.

The largest number of case handling errors occurred in the Office of Programs, which has the greatest responsibility for debt-related activity. Summary information concerning the types of mishandling that were the basis for our conclusions is presented in Appendix I.

We estimate the aggregate financial impact of the 48 instances of mishandling identified during the audit at approximately \$1,143,565. However, case mishandling has both financial and non-financial impacts, such as service delays and re-working costs, which are difficult to quantify.

Our study was limited to very large overpayments and the results cannot be projected to the full population of debts. However, our review has demonstrated the variety of errors that occur and disclosed the inadequacy of existing controls to ensure that only properly

adjudicated overpayments have been assessed and that all applicable policies and procedures have been followed.

The agency's experience with errors and mishandling in the population of all debt can be expected to vary from the results of this review. In some respects, large overpayments may be subject to more errors than smaller overpayments because large overpayments are frequently the result of complex circumstances. However, many of the errors identified during the audit are unrelated to the size of the overpayment. In addition, the harm done by mishandling a small overpayment may be disproportionate to its size.

Overpayment letters advise debtors of their rights to further review and/or waiver. Debtors may request a review of the facts which initiates the reconsideration process in the Office of Programs. A debtor may also ask the agency to waive recovery; waiver decisions are made by DRS. An unfavorable decision on a request for waiver may be appealed.

The reconsideration, waiver and appeals processes may mitigate or eliminate the financial impact of some debt recovery errors. For the 78 cases reviewed in detail, the monetary impact of most errors was eliminated when:

- the Office of Programs' reconsideration of the initial overpayment decision resulted in a revision, or
- waiver of recovery was granted by DRS, the Bureau of Hearings and Appeals or the three-member Board.

We quantified the financial impact of the reconsideration and waiver processes on the value of the overpayments in our study. The 78 debts reviewed during the audit, initially recorded at \$3.7 million in FY 1998, had been reduced to \$2.3 million (before any collections had been applied) by March 31, 2001.

The net reduction of \$1.4 million was the result of increases and decreases resulting from:

- changes and corrections by the Office of Programs outside of the reconsideration process (\$235,000);
- changes and corrections related to the reconsideration process in the Office of Programs (\$237,000);
- adjustments and waivers approved by DRS (\$ 345,000);
- waivers granted on appeal by the Bureau of Hearings and Appeals (\$440,000); and
- errors referred for correction during the audit (\$149,000).

Although the reconsideration, waiver and appeals processes may mitigate or eliminate the impact of errors on some debtors, these processes will not substitute for initial accuracy. Some debtors do not pursue their rights to due process. In addition, the waiver and appeals processes do not typically include tests of the mathematical and adjudicative accuracy of the debt as assessed; such a review of the facts must be specifically requested.

Debt Recognition and Collection in the Office of Programs

The Office of Programs has not established an effective quality assurance process for its debt recognition and recovery responsibilities. As a result, errors in the assessment and subsequent handling of overpayments may go undetected causing individual annuitants to suffer. In addition, management cannot identify error trends and take appropriate remedial action.

The Office of Programs is responsible for many key steps in the debt recovery process such as:

- identification of overpayments;
- computation of the amounts overpaid;
- creation of a debt recovery record on the PAR system;
- release of the initial overpayment letter;
- withholding of current benefits in satisfaction of outstanding overpayments; and
- reconsideration of the initial overpayment decision in response to debtor requests for a review of the facts.

The Office of Programs' present quality assurance process includes a second level of approval prior to release of an overpayment letter. However, it does not provide for periodic evaluation of overpayment handling. Although the Assessment and Training section develops overpayment statistics and performs periodic studies of debt-related issues, these studies and statistics focus primarily on the causes of overpayment and debt detection issues.

Our detailed review of the 78 RRA program debts over \$25,000 established during FY 1998 identified 37 errors (in 30 cases) that had occurred in the Office of Programs; some cases had more than one type of error. The major types of mishandling were miscalculation of the overpayment amount (13 occurrences) and reopening of a final decision contrary to applicable regulation (8 occurrences). In 7 cases, the agency contributed to the overpayment through delay or error in recognizing the need for re-adjudication.

Four instances of mishandling were classified as situations related to cross-organizational communication. This type of error is discussed in a later section of our

report. Five errors were attributed to miscellaneous mishandling because there was no common element among them.

Overpayment Letters

During our audit, we also observed that initial overpayment letters prepared by the Office of Programs do not always include clear, concise, and complete information concerning the circumstances of the overpayment. Although most initial overpayment letters are released via an automated system that standardizes the format, claims examiners must customize each letter by inserting explanatory text for each individual case.

We found the quality of the letters to be uneven. Although we saw many well-written letters, we also frequently identified letters that:

- did not adequately communicate the circumstances of the overpayment or the period to which the overpayment relates;
- referenced events and monetary transactions that appear to be unrelated to, or at variance with, the overpayment as assessed; and
- contained confusing information or language.

Responsibilities Shared by More than One Organizational Unit

In some situations, two or more of the several organizational units with debt recovery responsibilities must communicate in a timely and effective manner to ensure that agency policies concerning suspension, termination or reversal of debt recovery actions are properly applied. In some cases, that communication may take the form of an interim action to update the debt collection status of the overpayment.

Our review of the 78 debts over \$25,000 identified 12 errors (in 10 cases) that we classified as having resulted from a breakdown in cross-organizational communication; some cases had more than one error. For example:

- the timely filing of a waiver request or appeal did not prevent suspension of benefits to recover an overpayment;
- the existence of a pending waiver or appeal did not prevent release of dunning letters or the assessment of penalties and interest;
- a favorable waiver decision did not result in the payment of accruals previously withheld to recover the waived amount; and
- the PAR system record was not corrected to reflect annuities withheld to recover an outstanding overpayment or changes to the overpayment amount.

Each of these transactions requires that two or more organizational units take timely, correct action or an error will occur. No single organization is responsible for the quality of the outcome and, as a result, the quality of these transactions has not been ensured.

Waiver Processing

The quality of waiver decisions is not ensured because DRS has not established an adequate quality assurance process for its waiver operations. As a result, DRS may not render decisions on requests for a waiver of overpayment in accordance with regulations and management's expectations on a consistent basis.

DRS is responsible for making decisions on debtor requests for waiver of collection. We reviewed the file documentation for 48 cases in which a debtor's request for waiver of an overpayment had been denied. We observed that:

- the file documentation for waiver denials was limited to the letter advising the debtor of DRS's decision which, in many cases, is not sufficient to document the examiner's rationale; and

- letters released to the annuitant advising them of the decision on their request for waiver were sometimes brusque and often did not properly address the circumstances that gave rise to the overpayment and/or the issues raised by the debtor as the basis for their waiver request.

In addition, we questioned the decision in three cases in which the actual circumstances that caused the overpayment appeared to have been misunderstood by the examiner making the waiver decision. An understanding of the cause of the overpayment is fundamental to the waiver decision process. Waiver of collection may be granted only to those who are without fault in causing an overpayment and an understanding of the cause of the overpayment is central to the determination of fault.

The decision of a DRS examiner is subject to routine review only when the debt exceeds \$5,000 and the examiner decides to waive the overpayment. Decisions to waive collection of smaller overpayments and to deny requests for waiver of collection, regardless of overpayment size, are not routinely subject to a second level of review. This limited review is not adequate to ensure the quality and consistency of waiver decisions.

Recommendations

We recommend that:

1. the Office of Programs develop additional quality assurance initiatives to prevent and detect errors and mishandling in its debt recovery activities;
2. DRS assume responsibility for evaluating the quality of cross-organizational communications that impact debt recovery activities, and make recommendations for improvement as necessary;
3. DRS develop a quality assurance process to ensure that:
 - decisions on requests for waiver are fully documented;
 - the quality review process includes both waivers granted and waivers denied on an equal basis; and
 - communications with the public are appropriate and address the issues.

Office of Programs' Response

The Office Programs concurred with the first recommendation and offered the following additional comments:

- the aggregate financial impact, as shown in Appendix I, (lines 5-10) includes accounting errors that had no direct impact on the customers;
- the appeals process is an important and effective internal control; and

- Operations “reviews all cases remanded from the Reconsideration section to determine what, if anything could have been done better.”

OIG’s Comments on the Office of Programs’ Response

We disagree with the Office of Programs’ statements concerning the impact of certain errors and the value of the appeals process as a quality assurance tool.

Reliance on the appeals process penalizes individuals who accept the agency’s initial overpayment decision.¹ The current appeals process is an inherently limited source of information about the quality of debt recovery activity, even for large overpayments. Notably absent from the present quality assurance environment is a systematic, after-the-fact review process to identify the types and frequency of errors in overpayments of any magnitude.

Impact of Accounting Errors

In our opinion, the Office of Programs’ view of the impact of accounting errors on customers is too narrow. Some of the accounting errors cited in their response do impact customers, even though the impact may not be direct.

Role of the Appeals Process

We do not agree with the Office of Programs’ statement that “the appeals process is an extremely important internal control and the audit confirms that it is working.” This audit clearly demonstrated the inadequacy of quality assurance for debt recovery. Although the appeals process may mitigate the financial impact of errors on individuals, only those who enter the appeals process can benefit.

The Office of Programs cited a statement in the draft report that “most of the exceptions cited by the audit were ultimately corrected, typically when the debtor pursued his rights to review and/or appeal.” For purposes of the audit, we considered an error to have been “ultimately corrected” if the annuitant was relieved of any financial impact, even if that relief came as a result of waiver of recovery rather than correction of the original error. We have expanded the language in the final report to make this distinction.

In addition, the value of the appeals process as a quality assurance tool is inherently limited because:

- all debts are not subject to the appeals process;

¹ “Appeals process,” as used here, is a collective term for the several processes through which debtors may pursue their right to due process which include reconsideration, waiver, and appeals from denial of waiver at several levels.

- the appeals process does not always include reconsideration by the Office of Programs;
- although the reconsideration section, within the Office of Programs, remands some cases to Operations for further analysis, there is, to our knowledge, no systematic feedback from other stages of the appeals process that are the responsibility of other organizational units; and
- waiver decisions, whether made by DRS, the Bureau of Hearings and Appeals, or the three-member Board, are based on findings of fault and financial hardship; computational and adjudicative accuracy are only peripheral issues.

Bureau of Fiscal Operations' Response

The Bureau of Fiscal Operations has initiated action to implement recommendations two and three.

In their response to the second recommendation, bureau management noted that DRS already monitors debt recovery activities and frequently initiates meetings with other areas of the agency on an informal basis.

In response to the third recommendation, management stated that DRS has recently taken action to adopt a decision narrative format for all waiver denials and to include both waivers denied and waivers granted in the quality assurance process. The revised procedures include a review of decision narratives and communications with the public.

INCARCERATED FELONS

The RRB has collected, and continues to assess and collect, overpayments that were established due to a misapplication of certain provisions of the Social Security Act. As a result, annuitants, their heirs, and survivors have been, and will continue to be, held responsible for debts that should never have been assessed.

The 1983 amendments to the Social Security Act denied benefits to persons imprisoned for conviction of a felony. The RRB's General Counsel initially found that this provision was applicable to tier I benefits because the RRA provides that the tier I benefit is the amount which would have been payable under the Social Security Act if the employee's earnings had been creditable under that Act.² Accordingly, the RRB withheld the tier I portion of the benefits of incarcerated felons. In some cases, overpayments were assessed for prior periods because the agency did not receive timely notice of conviction and incarceration necessitating a retroactive adjustment for prior periods.

In July 1994, the three-member Board received the appeal of an annuitant from whom benefits were withheld during the period of his incarceration for a felony. In his appeal, the appellant, whose claim had previously been denied at lower levels of review, had made clear his intention to pursue a Board-level denial in court.

In making its decision on the appeal, the three-member Board sought the advice of counsel. The agency's General Counsel advised that, although the Board could deny the appeal, "it is my considered judgment that that decision would be reversed by the District of Columbia Circuit Court of Appeals if ...[the appellant] ... petitioned that court." In offering this opinion, the General Counsel cited previous experience with court tests of the applicability of the Social Security Act to RRA annuities in which the Board was ordered to pay benefits previously withheld.

In the cases cited by the General Counsel, three Federal district courts had rejected the RRB's position that the tier I annuity amount is no longer payable to a spouse based on having a child in care once the child attains age 16. The RRB had withheld these benefits pursuant to provisions in the Social Security Act.³

In the third court test, Nancy Johnson et al., versus the United States Railroad Retirement Board, which was decided on July 10, 1992, the United States Court of Appeals for the District of Columbia Circuit found that the RRB's position:

² Legal Opinion L-83-176, RRB Bureau of Law

³The 1981 amendments to the Social Security Act lowered the age of termination for children's benefits, payable to their "young," pre-retirement age parent, under the Social Security Act from 18 to 16. Congress did not amend the parallel provision in the RRA. As a result of the change in the Social Security Act alone, the RRB denied benefits when the child attained age 16.

. . . lacked a reasonable basis in law because it forces annuitants to meet the eligibility requirements under both statutes, even though the Railway Act refers to the Social Security act only for the purpose of determining the amount an eligible Social Security annuitant would have received.

The RRB had withheld the tier I benefits of incarcerated felons by applying provisions of the Social Security Act to eligibility determinations under the RRA in a manner that is analogous to the treatment of young mothers in the case cited above.

In January 1995, the three-member Board decided to reverse the agency's previous action to withhold benefits for the period during which the appellant had been incarcerated, two and one-half years after the court's decision in Nancy Johnson.

As a result of the three-member Board's decision to award benefits on appeal, the Office of Programs changed its policy concerning payment of benefits to incarcerated felons. After consulting legal counsel, the Office of Programs restored the tier I portion of the annuities of other similarly affected beneficiaries for periods after January 1995. However, the RRB did not return benefits that were withheld prior to February 1995, and continued to collect overpayments that had previously been assessed. In addition, the Office of Programs continued to assess new overpayments for periods of incarceration that pre-dated the change in policy.

During the audit, we identified 70 accounts receivable valued at over \$440,000 established under the incarcerated felons provisions of the Social Security Act. These 70 accounts included four debts still open and subject to collection as of March 31, 2001, among them an overpayment assessed during September 2000. In addition, we identified a case which was overlooked when the tier I benefits of incarcerated felons were reinstated prospectively; this annuitant had been underpaid approximately \$80,000.

We believe that the RRB should have restored benefits previously withheld under the incarcerated felons provisions of the 1983 amendments to the Social Security Act. It is unfair that only the individual who pursued an appeal to the three-member Board with the threat of further legal action was paid while those who accepted lower level agency decisions were not. In addition, the agency has no real legal basis for the continued assessment and collection of overpayments under those provisions since they could not be successfully pressed in court.

Recommendations

We recommend that the Office of Programs:

4. return benefits withheld from Railroad Retirement annuities under the provisions of the Social Security Act denying benefits to incarcerated felons;

5. reverse the overpayments previously assessed under those provisions and return the related recoveries; and
6. end the practice of assessing new overpayments under those provisions.

Office of Programs' Response

The Office of Programs has asked that recommendations four, five and six be redirected to the General Counsel and the three-member Board because the Office of Programs acted in this area at the direction of the General Counsel, based on a decision of the three-member Board.

OIG's Comments on the Office of Programs' Response

Since the Office of Programs has operational responsibility for this matter, the OIG will not redirect the recommendations. These recommendations will remain open until the Office of Programs has obtained direction from the three-member Board and taken action accordingly.

OTHER MATTERS OF INTEREST

During the course of our audit, we noted certain matters related to the translation of law into regulation and procedure that impact the quality of the debt recovery process. These issues relate primarily to management's intention with regard to debt recovery operations rather than to transactional accuracy. Accordingly, our observations are presented without recommendation.

Determinations of Fault, Fraud and Financial Impact

During the course of our audit, we have observed that there is a lack of consensus concerning the specific actions that constitute fault, fault similar to fraud, and fraud. We noted a similar disparity of opinion concerning the circumstances in which recovery would be against equity and good conscience, or contrary to the purposes of the RRA. Determinations of fault, fraud and financial impact are key parts of decisions to assess and recover RRA benefit overpayments.

Federal regulations set forth the circumstances under which the agency may reconsider an otherwise final decision for purposes of revising that decision. This regulation provides that a final decision may be reopened at any time if that decision was obtained by fraud or similar fault.⁴ These regulations are applied by the Office of Programs in assessing overpayments and responding to debtor requests for a review of the facts in their case.

In addition, Federal regulations provide for waiver of recovery in the case of an RRA benefit overpayment when the overpaid individual is without fault, and recovery would be contrary to the purpose of the RRA, or would be against equity or good conscience.⁵ These regulations are applied by DRS, the Bureau of Hearings and Appeals, and the three-member Board in deciding whether to grant debtor requests for waiver of recovery.

While we did not expect to see perfect uniformity between the various organizations that make fault determinations, we were greatly surprised by the extent of the differences in viewpoint for even commonly occurring debtor circumstances. In addition, there is considerable difference of opinion at all levels whether any failure to act by the agency, or indirect action by the debtor, should impact determinations concerning fault or fraud. When a debtor has been judged to be without fault, we noted a similar divergence of opinion in the subsequent evaluation of financial impact. Financial impact includes both past reliance on the overpaid amounts, and possible future financial hardship of collection. Financial impact must be assessed in order to determine whether recovery would be contrary to the purposes of the act, and may play a part in determining whether recovery would be against equity and good conscience.

⁴ 20 CFR § 261.2

⁵ 20 CFR § 255.10

For example, Federal regulations permit the reopening of an otherwise final decision of the Office of Programs when “fraud or similar fault” was used to obtain the decision. By comparison, only individuals determined to be “without fault” may be granted waiver of collection; collection must be pursued from those determined to be “not without fault.” In actual practice, we see no distinction between the two standards. The simple failings that will cause an individual to be “not without fault” appear to be sufficient for a determination that “fraud or similar fault” is present.

The lack of consensus concerning the specific actions that constitute fault, fault similar to fraud, and fraud; and the differing views concerning financial impact make it unwise for debtors to accept an overpayment without exhausting the appeals process.

Reopening of Administratively Final Decisions

As previously discussed, our review identified some cases in which an overpayment had been assessed contrary to the regulations governing the reopening of final decisions. Those cases had been adjudicated during the first full year in which the applicable regulations were in effect. Accordingly, we reviewed additional, more recently adjudicated overpayments to determine whether a problem continues to exist.

We reviewed the reopening decision in an additional judgmentally selected sample of 67 overpayments established during FY 1998, 1999 and 2000. This sample was deliberately biased towards cases that we believed to be at high risk for an incorrect reopening. Although we identified two cases in which an overpayment had been assessed as a result of an incorrect reopening decision, we do not believe that a serious problem presently exists.

Nevertheless, the future quality of decisions to reopen otherwise administratively final decisions should not be considered ensured, because of the lack of consensus in fault determinations, and the inadequacy of the overall quality assurance process for debt recovery activities as discussed in earlier sections of this report.

Compromise of Debt

Our review included two cases in which a debtor agreed to pay, and the RRB accepted, a partial settlement of the outstanding debt in lieu of full recovery. These agreements were advantageous to the agency; however, they may not have been in the best interests of the annuitant.

In the cases reviewed during the audit, the debtor might have fared better by pursuing his full appeal rights. DRS accepts compromise offers only after the annuitant has withdrawn any pending request for reconsideration, waiver or appeal. Although the debtor knows that the compromise offer will be accepted prior to withdrawing from the appeals process, he may not be aware that remaining in the appeals process could be very advantageous.

In one case, a compromise offer provided for acceptance of \$20,000 of an annuitant's \$27,000 savings in satisfaction of an outstanding overpayment of \$60,927. The annuitant, aged 81, abandoned an appeals process that could have been favorable. In addition, it appears that the field office representative inappropriately interjected his personal bias into the case and was instrumental in obtaining the offer of compromise from the annuitant after reviewing the annuitant's financial disclosure form.

In the second case, the annuitant, aged 75 and insolvent, represented by legal counsel, agreed to pay \$23,726 as settlement-in-full of a \$27,046 overpayment. A DRS debt specialist, aware that the annuitant would soon receive a large accrual from the Social Security administration, had suggested that the annuitant offer to compromise for the amount of the accrual. The accrued Social Security benefits were the result of the same transfer of benefit jurisdiction that had caused the overpayment. The agreement to settle the debt was not unfair. However, it could have been advantageous for the annuitant to remain in the appeals process since she appeared to be without fault in causing the overpayment.

We performed a detailed review of the 78 overpayments greater than \$25,000 that were recorded on the PAR system during FY 1998. A brief description of the 48 handling errors and their monetary impact that we observed during our review is presented below.

Type of error	Errors	Monetary Impact
Overpayment assessed in the wrong amount as a result of computational errors.	13	\$ 92,043
Erroneous suspensions/interest/penalties assessed and/or dunning notices released, prior to a final decision on an appeal.	6	1,564
Overpayment assessed from an incorrect application of reopening regulations	8	375,632
RRB contributed to overpayment from delay/error in recognizing need readjudication.	7	266,429
The PAR system did not reflect corrections to the overpayment amount.	3	44,643
Accrual withheld but never paid to annuitant or applied to an outstanding debt.	3	7,756
The overpayment was recorded in the PAR system net of accruals withheld.	2	1,343
A duplicate entry was recorded on PAR.	2	203,635
An over payment recorded in the PAR system but recovery action not initiated.	1	88,171
Recovery from RUIA benefits is not supported by the related trust fund transfer.	1	4,997
An overpayment letter was never released to the debtor.	1	52,350
The IRS offset program was used prior to a final decision in the appeals process.	1	5,002
TOTAL	48	\$1,143,565